THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte OLE K. NILSSEN

Appeal No. 96-0319
Application No. 08/155,519[1]

ON BRIEF

Before THOMAS, HAIRSTON, and KRASS, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1 through 27, all of the claims pending in the application.

[1] Application for patent filed November 22, 1993.

The invention is directed to a lighting system for a suspended grid ceiling and, more particularly, to a lighting system which employs a power conditioner which transforms an AC input line voltage to a DC voltage and employs circuitry which prevents any power drawn from the DC output terminals from exceeding the maximum amount usually considered safe from fire initiation hazard.

Representative independent claim 1 is reproduced as follows:

1. An arrangement comprising:

a pair of power line conductors across which exists an AC power line voltage of frequency lower than 100 Hz; the amount of power available from the power line conductors being distinctly higher than the maximum amount usually considered safe from fire-initiation hazard;

a power conditioner having (i) a pair of power input terminals connected with the power line conductors, and (ii) a pair of DC output terminals across which is conditionally provided a DC supply voltage; the power conditioner including sensing and control circuitry operative to prevent any power drawn from the DC output terminals from exceeding the maximum amount usually considered safe from fire initiation hazard;

an electronic ballast having (i) a pair of DC input terminals disconnectably connected with the DC output terminals by way of a flexible connect cord, and (ii) a pair of AC output terminals at which is conditionally provided an AC ballast voltage of frequency higher than 10 kHz; and

a lighting panel mounted in a ceiling grid system suspended some distance below a permanent ceiling; the lighting panel having (i) a pair of AC input terminals connected with the AC output terminals, and (ii) gas discharge lamp means connected in circuit with the AC input terminals.

The examiner relies on the following references:

Roberts	3,801,865	Apr. 2, 1974
Canadian Patent (Waller)	633,937	Jan. 2, 1962

Claims 1 through 27 stand rejected under 35 U.S.C. 103 as unpatentable over Waller in view of Roberts.

Reference is made to the brief and answer for the respective positions of appellant and the examiner.

OPINION

At the outset, we note that the examiner has improperly referred back to more than one office action in the answer for a recitation of the rationale for the rejection, in violation

of MPEP 1208. That section of the MPEP permits an examiner to refer back to the final rejection or a single other action in order to incorporate in the answer the statement of the grounds of rejection. The examiner in the instant case refers back to the final rejection, Paper No. 4, which, in turn, refers back to another office action, Paper No. 2. The examiner is hereby notified not to continue this practice in the future.

Turning to the rejection of claims 1 through 26 under 35 U.S.C. 103, independent claims 1, 15, 21, 24 and 25 each requires a “power conditioner” which transforms an AC input line voltage into a DC voltage. Waller, the primary reference, discloses no such use of a DC voltage, disclosing, instead, a conventional lighting grid wherein the lights are connected to a receptacle for receiving AC line voltage. Roberts, relied on by the examiner for the teaching of a power conditioner, as claimed, discloses no such conversion, as inherently claimed. Roberts starts with a DC supply voltage for use in hazardous situations, as in mines, and provides no teaching or suggestion of converting an AC power line voltage to a DC voltage to be used in grid lighting in order to prevent a fire hazard. We

find no reason for the skilled artisan to have been led to employ any teaching of Roberts in Waller in any manner so as to result in the instant claimed invention.

Appellant argues this DC limitation but the examiner's response is to repeat, verbatim, at pages 3-4 of the answer, rationale from the original office action, Paper no. 2, without addressing appellant's argument. Then, at the bottom of page 4 to the top of page 5 of the answer, the examiner finally responds, contending only that as to the DC terminals and the flexible connect cord, "it would have been an obvious matter of design choice to include such features which are well known in the art." We disagree. The employment of a DC voltage in the manner claimed, resulting from a power conditioner converting the AC power supply voltage, is more than a mere design choice. The skilled artisan would have needed to have been led to employ such by some teaching or suggestion in the prior art which the examiner has not identified. Accordingly, we will not sustain the rejection of claims 1 through 26 under 35 U.S.C. 103 based on the evidence provided by Waller and Roberts.

With regard to independent claim 27, we reach a different result.

Initially, we note that we find it curious that appellant has argued the merits of most of the claims specifically by referring, inter alia, to the claimed DC terminals and the fact that the power conditioner converts the AC input supply voltage to a DC voltage, but then stops short of mentioning all of the claims, leaving the reader with the impression that the same arguments apply to claim 27 since appellant recites, at page 6 of the brief, “etc., etc.”

However, when we refer to independent claim 27, which is much broader than the other claims and appears to read on any conventional grid lighting system, e.g. Waller’s, it is clear that there is no mention therein of any DC terminal or power conditioner for converting from AC to DC. In fact, the only limitation within claim 27 which is argued at all by appellant, and this argument is directed to other claims, is the limitation of a “flexible connect cord.” Clearly, the cable 29 in Waller is a “flexible connect cord.” Moreover, the well-

known Romex cable type connector, and even the armored type cable, used in conventional lighting systems each qualifies as a "flexible connect cord," as claimed.

Since appellant offers no other arguments with regard to claim 27, we will sustain the rejection of this claim under 35 U.S.C. 103[2].

We have sustained the rejection of claim 27 under 35 U.S.C. 103 but we have not sustained the rejection of claims 1 through 26 under 35 U.S.C. 103. Accordingly, the examiner's decision is affirmed-in-part.

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[2] We must admit, also, that we are perplexed as to the exact meaning of the "characterized in that..." clause at the end of the claim.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. 1.136(a).

AFFIRMED-IN-PART

JAMES D. THOMAS Administrative Patent Judge	)
KENNETH W. HAIRSTON Administrative Patent Judge	) BOARD OF PATENT APPEALS AND INTERFERENCES
ERROL A. KRASS Administrative Patent Judge	)

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